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James H. Errico

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EXAMINER

SHEPARD, JUSTIN E

ART UNIT.

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



# Office Action Summary

Application No.

09/819,126

Applicant(s)

ERRICO, JAMES H.

Examiner

Justin E. Shepard

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-15, 25-28, 50-53, 57 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-15, 25-28, 50-53, 57 and 59-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/23/07</u> .                                                 | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/10/07 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 4/10/07 have been fully considered but they are not persuasive.

Page 14, paragraph starting with "As noted":

The applicant argues that the "moods" taught by Herz cannot be considered user preferences. Citing the paragraph after the paragraph cited by the examiner in the previous rejection, Herz teaches that programs may be matched to channels for scheduling content based channels (wherein the criteria could be a mood).

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-11, 13, 14, 25, 26, 27, 50, 51, 52, 53, 57, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Finseth.

Referring to claim 1, Herz discloses a method for selecting at least one of audio and video (figure 1) comprising:

(a) receiving user attribute information that includes user preferences (figure 1, part 104);

(b) receiving program information corresponding to said at least one of said audio and video, where said program information comprises attributes each corresponding to a respective one of said user preferences (figure 1, part 102; column 28, lines 6-14), where said user preferences include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level (column 17, lines 52-61; column 27, lines 62-67; column 28, lines 1-5);

(c) determining the desirability of said at least one of said audio and video based upon jointly processing preferences of said program information attributes and processing preferences of said user attribute information (figure 1, part 106; column 27,



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lines 62-67; column 28, lines 1-14), said preferences selectively include data indicative of at least a first, a second, and a third option (column 10, lines 51-60; column 11, lines 6-12);

(i) said first option including a preference indicative of the positive desirability of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(ii) said second option including a preference indicative of non-desirability of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(iii) said third option including a preference indicative of indifference desirability, being neither said positive or non-desirability, of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(d) wherein said desirability is increased based upon said first option, said desirability is decreased based upon said second option, and said desirability remains the same based upon said third option (column 14, lines 20-33).

Herz does not disclose a method where said program information attributes each include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level; and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing



preferences of at least said first level and said second level of said hierarchical levels of said user attribute information.

In an analogous art, Finseth teaches a method where said program information attributes each include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level (column 12, lines 47-48 and 53-57; figure 4, parts 98A); and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information (Note: as the hierarchical program attributes found in figure 4 of Finseth are found in the inputs to the agreement matrix calculation in Herz (column 28, lines 6-14) it is interpreted as these hierarchical attributes being jointly processed).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the hierarchical program attribute information taught by Finseth in the method disclosed by Herz. The motivation would have been to provide a more intuitive method of filtering the display of programs when provided in the EPG.

Claims 10, 50, 57, and 60 are rejected on the same grounds as claim 1.



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Regarding claim 2, Herz teaches wherein said first option is a non-binary preference value (column 10, lines 51-60).

Regarding claim 3, Herz teaches wherein said second option is a non-binary preference value (column 10, lines 51-60).

Referring to claim 4, Herz teaches wherein said first option is positive preference value (column 10, lines 51-60).

Referring to claim 5, Herz teaches wherein said second option is a negative preference value (column 11, lines 6-12).

Regarding claim 6, Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim 7, Herz teaches wherein said preferences include at least one default value (column 11, lines 56-60).

Regarding claim 8, Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).



Regarding claim **9**, Herz teaches wherein said determining results in a value (column 10, lines 51-60).

Regarding claim **11**, Herz teaches wherein said determining the desirability includes: (a) calculating a first ranking value for said first program attribute information; (b) calculating a second ranking value for said second program attribute information; and (c) determining said relative ranking based upon said first ranking value and said second ranking value (column 14, lines 20-33).

Regarding claim **13**, Herz teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute; (b) said second program attribute information includes said first attribute and said second attribute; and (c) said determining said relative ranking indicates said second program as more desirable than said first program (column 14, lines 20-33).

Claim 25 is rejected on the same grounds as claims 1 and 13.

Regarding claim **14**, Graves teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute; (b) said second program attribute information includes said first attribute and a relatively smaller presence of said second attribute in comparison to said first attribute; and (c) said determining said relative ranking indicates



said second program as more desirable than said first program (column 14, lines 20-33).

Regarding claim **26**, Herz teaches wherein said evaluating is free from combining multiple preference values into a single composite preference value (column 10, lines 51-60).

Regarding claim **27**, Herz teaches wherein a said composite score is determined for a plurality of said videos, and said video are ranked based, at least in part, upon said composite scores. (column 14, lines 20-33).

Regarding claim **51**, Herz teaches wherein said ranking determines said first video as more desirable for said user than said second video (column 10, lines 51-60).

Regarding claim **52**, Herz teaches wherein said ranking determines said second video as more desirable for another user than said first video (column 10, lines 51-60).

Regarding claim **53**, Herz teaches wherein said ranking is in a relativistic manner (column 10, lines 51-60).



2. Claims 15, 28, 59, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Finseth as applied to claim 10 above, and further in view of Graves.

Referring to claim 15, Herz and Finseth do not disclose a method wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program; (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller presence; and (c) said determining said relative ranking indicates said second program as more desirable than said first program.

In an analogous art, Graves teaches a wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value (weight) than Story appeal); (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller



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presence (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value(weight) than Story appeal and a program could have a smaller value for an attribute when compared to that value for that attribute of another program); and (c) said determining said relative ranking indicates said second program as more desirable than said first program (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **28**, Herz and Finseth do not disclose a method wherein said composite score is determined free from comparing said first score and said second score.

In an analogous art, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by



Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **59**, Herz and Finseth do not disclose a method wherein said evaluating is based upon a summation operation.

In an analogous art, Graves teaches wherein said evaluating is based upon a summation operation (See Col. 8 Eqn. 1). From the specification the AND function is an averaging function (Page 131 lines 13-14), the result of Graves summation divided by the number of elements summed ( $n$ ).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **61**, Herz and Finseth do not disclose a method wherein at least one of said first operator and said second operator is an "OR" function.

In an analogous art, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1). From the specification the "OR" function is a summation (Page 135 line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the



result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **62**, Herz and Finseth do not disclose a method wherein said first operator and said second operator are "OR" functions.

In an analogous art, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **63**, Herz and Finseth do not disclose a method wherein said first set and said second set depend from the same preference within said hierarchy.

In an analogous art, Graves teaches wherein said first set and said second set depend from the same preference within said hierarchy (See Col. 8 Eqn. 1 The first set and second set are on the same level of the hierarchy and depend from the overall preference).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.



Regarding claim 64, Herz and Finseth do not disclose a method wherein said first set and said second set have a different number of preferences.

In an analogous art, Graves teaches wherein said first set and said second set have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an odd number divided into two sets).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS

  
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